

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALVIN M. ROBINSON,
Plaintiff,

v.

PHILLIPE SILVA, et al.,
Defendants.

Case No. 24-cv-02154 BLF (PR)

**ORDER OF SERVICE; DIRECTING
DEFENDANTS TO FILE
DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

Plaintiff, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against prison staff at Salinas Valley State Prison (“SVSP”), where he was formerly confined. Dkt. No. 1. Plaintiff’s motion for leave to proceed *in forma pauperis* will be addressed in a separate order. Dkt. No. 2.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune
2 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
3 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
5 elements: (1) that a right secured by the Constitution or laws of the United States was
6 violated, and (2) that the alleged violation was committed by a person acting under the
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 Plaintiff claims that Defendants Phillipe Silva, Officer Quines III, Sgt. Reynoso,
10 Officer Lopez, and Officer Torres were involved in the use of excessive force while
11 executing a strip search on him at SVSP. Dkt. No. 1 at 3-4. Plaintiff claims he agreed to
12 the strip search and was not resisting but that Defendants grabbed and slammed him to the
13 ground, then continued to push him down unnecessarily while he remained helpless and
14 handcuffed. *Id.* Plaintiff also claims that the same Defendants are also liable for their
15 “failure to act and prevent the assault and excessive force from continuing to happen.” *Id.*
16 at 5. Plaintiff claims that he needed treatment at an outside hospital and was wheelchair
17 bound for 8 to 9 days following the incident. *Id.* Plaintiff seeks damages, including
18 punitive, for Defendants’ “reckless and malicious acts.” *Id.* at 3.

19 Plaintiff’s allegations are sufficient to state cognizable claims of excessive force
20 and failure to intervene under the Eighth Amendment. *See Hudson v. McMillian*, 503 U.S.
21 1, 6 (1992); *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995). Plaintiff also states a
22 cognizable claim based on the allegation that the search was conducted in an unreasonable
23 manner. *See Bell v. Wolfish*, 441 U.S. 520, 561 (1979).

24 **CONCLUSION**

25 For the foregoing reasons, the Court orders as follows:

- 26 1. The following Defendants shall be served at SVSP:

- a. **Sgt. Reynoso**
- b. **Officer Phillipe Silva**
- c. **Officer Quines III**
- d. **Officer Lopez**
- e. **Officer Torres**

Service on the listed defendant(s) shall proceed under the California Department of Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve on CDCR via email the following documents: the operative complaint and any attachments thereto, Dkt. No. 1, this order of service, and a CDCR Report of E-Service Waiver form. The clerk also shall serve a copy of this order on the plaintiff.

No later than 40 days after service of this order via email on CDCR, CDCR shall provide the court a completed CDCR Report of E-Service Waiver advising the court which defendant(s) listed in this order will be waiving service of process without the need for service by the United States Marshal Service (USMS) and which defendant(s) decline to waive service or could not be reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney General's Office which, within 21 days, shall file with the court a waiver of service of process for the defendant(s) who are waiving service.

Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each defendant who has not waived service according to the CDCR Report of E-Service Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205 forms and copies of this order, the summons and the operative complaint for service upon each defendant who has not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E-Service Waiver.

2. No later than **ninety-one (91) days** from the date this order is filed, Defendants shall file a motion for summary judgment or other dispositive motion with

1 respect to the claims in the complaint found to be cognizable above.

2 a. Any motion for summary judgment shall be supported by adequate
3 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
4 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
5 qualified immunity found, if material facts are in dispute. If any Defendant is of the
6 opinion that this case cannot be resolved by summary judgment, he shall so inform the
7 Court prior to the date the summary judgment motion is due.

8 b. **In the event Defendants file a motion for summary judgment, the**
9 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**
10 **warnings under *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**
11 ***Woods v. Carey*, 684 F.3d 934, 940 (9th Cir. 2012).**

12 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court
13 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
14 motion is filed.

15 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and
16 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment
17 must come forward with evidence showing triable issues of material fact on every essential
18 element of his claim). Plaintiff is cautioned that failure to file an opposition to
19 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to
20 the granting of the motion, and granting of judgment against Plaintiff without a trial. See
21 *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18
22 F.3d 651, 653 (9th Cir. 1994).

23 4. Defendants shall file a reply brief no later than **fourteen (14) days** after
24 Plaintiff's opposition is filed.

25 5. The motion shall be deemed submitted as of the date the reply brief is due.
26 No hearing will be held on the motion unless the Court so orders at a later date.

27 6. All communications by the Plaintiff with the Court must be served on
28

Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or Defendants' counsel.

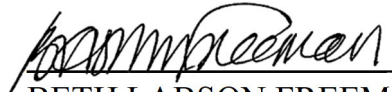
7. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

8. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

9. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

IT IS SO ORDERED.

Dated: __August 21, 2024__


BETH LABSON FREEMAN
United States District Judge

Order of Svc
PRO-SE\BLF\CR.24\02154Robinson_svc